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Voluntary Public

Date: 8/4/2016

GAIN Report Number: RO1609

Romania

Post: Bucharest

New Romanian law on food trading triggers adjustments in the supply

Report Categories:

Retail Foods

Trade Policy Monitoring

Agricultural Situation

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Report Highlights:

A new bill threatens to impact food retail operations and the supply chain in Romania. The view of the supporters is that the new provisions will force retailers to source more food products from Romanian producers and encourage expansion of local production, while opponents argue that the new law will trigger higher prices for food products and is not a guarantee of increased competitiveness. Although the law is in many respects vague and incomplete and requires additional legislation, AgBucharest attempted to assess the initial potential impact on U.S. food exports.

General Information:

On July 15, 2016 a new law amending existing legislation on food trading was published in the Official Gazette. It brings instructions on how the relationship between retailers and food suppliers should work in regard to payment terms, goods reception, shelves, labelling and origin of food sold in modern retail. The initial draft included only restrictions on the work schedule of the large retail shops (over 2,500 sqm) prohibiting them to open stores on Sundays and during local holidays. The Romanian Government reviewed and rejected the proposal in September 2015. In their view, if approved, the law would lead to food consumption decline since in general Romanian consumers tend to shop during weekends. In addition the Romanian Government found the law as being discriminative by imposing the rules only on large retailers. The Romanian Senate, as the first chamber to debate the bill, rejected the proposal back in November 2015.

The decisional chamber for this draft is the Lower House of the Romanian Parliament, so the text moved to Chamber of Deputies. In the review process, the text was analyzed by several entities, such as Committee for Industry, Legislative Council, Romanian Government, each issuing an opinion. While some of these bodies agreed with the draft, Romanian Government reconfirmed the lack of support for the law again in March 2016.

The Committee for Agriculture of Chamber of Deputies strongly supported the proposal. During the consultation process, the paragraphs on work schedules were removed, but a great deal of new amendments was incorporated. The Ministry of Agriculture publicly supported the proposal despite the fact that the Romanian Government rejected it. On June 8 2016 the plenary of the Chamber of Deputies overwhelmingly voted in favor of the bill. On July 12 2016 the President of Romania promulgated the law and three days later, on July 15 2016, Law 150/2016 amending and supplementing the Law 321/2009 on food products trading was published in the Official Gazette.

Some of the changes introduced by the law have been subject to strong live debates among the major players in the food sector, agricultural producers, processors, and retailers. The Association of Large Retailers Network (AMRCR) has been very vocal over the past year and actively participated in the debates organized at the legislative level. In their view the proposal is aimed at "undermining modern commerce", warning that "short supply chain does not guarantee support for Romanian producers and narrows Romanian consumers the freedom to choose." The Association defined the amendments as being "anticompetitive and discriminatory" and warned that the concept of "short supply chain" adopted was not at all a guarantee that Romanian consumers will have access to local products to a larger extent or that Romanian local producers would be protected from the competition of external producers. Furthermore, the association requested the Romanian Government and Chamber of Deputies to notify the European Union regarding the full text of the revised law. Smaller retailers were in favor of the law though as their scale of operations in terms number of stores and product range offers them more flexibility in the relationship with the suppliers.

Local agricultural producers' and processors organizations hailed the law considering it a step forward in developing local agricultural production. In their view the new law will create the legal framework for a fair profit distribution along the whole agri-food chain, while the share of Romanian food products

on the retail shelves will grow.

Content of the law

The final form of the law introduces definitions for terms such as of “Romanian meat”, “Romanian product”, “acquisition price”, “sale-at-loss” etc. The law provides a definition also on “short supply chain”. According to the law, “Romanian product” is a product obtained on the national territory from raw materials originating 100 percent from farms located in Romania. Another term is “short supply chain”. “Short supply chain” is the chain which involves a limited number of economic operators engaged in activities of the cooperation and local economic development, as well as geographical and social relationship among producers, processors and consumers.

Following complaints from local suppliers, one of the amendments addresses the high fees charged by the retailers, so the new law forbids retailers to invoice/re-invoice and claim payments for fees and services from suppliers. Moreover, retailers are prohibited from imposing on suppliers the obligation not to sell to other retailers the same products at the same or lower price they purchased. The new law also tackles the payment terms, introducing a maximum of 7 calendar days in case of fresh products and 30 calendar days term in which the retailer must pay the supplier.

The law also altered the legislation on meat labelling for products sold in Romanian territory. The new label should contain the following information: origin country of the animal, country where the animal was born in, raised, slaughtered, the health stamp/identification and name of the commercial operator, country of the cutting plant. In the case of meat products, the label must indicate the percentage of meat originating from Romania.

Nevertheless, the article generating the strongest debate is the one making it mandatory for retailers to source through the “short supply chain” at least 51 percent (of the volume of merchandise displayed on the shelves) for each of the following food categories: meat, eggs, fruits, vegetables, honey, dairy products and bakery goods. The above-mentioned provision does not apply to retailers with an annual turnover or total assets of less than two million EURO (equivalent in local currency). In order to bring more clarification regarding the “51 percent rule” the Romanian Ministry of Agriculture will issue an order setting up the framework in which the amounts may be supplemented with products from outside the short supply chain, as a result of consultation with entities part of the common market organization. The paragraph referring to 51 percent will enter into force in 6 months after publication, which means January 15, 2017. However it is not clear when the Implementing rules are expected to be drafted.

The new law also brings an obligation for retailers to allocate distinct space for the display and sale of Romanian products, within the terms of the law. In addition, retailers must conduct promotional and selling activities for Romanian food products, the frequency and scheduling being determined through a decision of local authorities.

In terms of law enforcement, the law failed to provide a reasonable implementation time (three days) and did not include specific deadlines for the subsequent legislation to be issued. The law set implementation dates only for meat labelling and the rule of 51 percent, implying that the majority of provisions are enforced immediately. Therefore, in order to comply with law, retailers proceeded to notifying their suppliers about the need to renegotiate existing contracts, especially regarding delivery

of goods and payments terms. Failure to comply with the provisions of this law triggers high penalties for retailers, including revoking their functioning permits.

As the law is expected to have major effects on supply chain for goods originating from other EU member states and third countries, notifying the provisions of the new law to the EU Commission and to the World Trade Organization is necessary as well. The current text only states that the Veterinary and Food-Safety Authority must notify the EU member states about the new provisions on meat and meat products labelling and provide justification for adopting such provisions. The specific provisions on meat will enter into force in 90 days after the moment of EU communication.

Who should be concerned?

The law is anticipated to impact retailers, suppliers and consumers. Following the laws adoption, retailers warned about the need to redesign their commercial policies, renegotiate contracts with their suppliers, and reconsider the programs targeting local product promotion, including Romanian products.

On the other hand, while the bill is expected to encourage expansion of local production in the long-run, suppliers have a huge challenge in short-run in fulfilling retailers' needs in terms of quantity, quality, assortment, and logistics. This is a valid concern in case of products such as fresh fruits and vegetables. Considering the large number of suppliers that retailers work with, retailers warned that all of their supplies must be fully equipped in order to be capable of issuing/approving payment documents in such a short time. Consequently some of the retailers may proceed with analyzing their portfolio and exclude from their shelves goods which have a slower turnover rate, certainly disadvantaging some suppliers and consumers.

On the other hand, consumers might face an increase in prices at the retail level as competitive suppliers might be eliminated in favor of the ones complying with in the criteria imposed by the new law. Moreover, shifts in retailers' portfolios due to the new conditions may lead to a deterioration in the range of products consumers have access to.

Is there an impact on U.S. food and beverages exports?

United States is among the top 15 agricultural trading partners of Romania. In 2015 total U.S. agrifood exports to Romania increased by 45 percent from U.S. \$ 96 million to U.S. \$139 million. According to the trade data available for January - April 2016 U.S. total food and beverages exports grew by 18 percent compared to last year, reaching U.S. \$48.5 million.

The major part of U.S. exports on the Romanian market consists of raw commodities, products used in the food service sector or in local food-industry as ingredients. Therefore, based on the export structure and the current information available in the market, AgBucharest estimates that these amendments will not have a major impact on the United States food exports. Nevertheless, AgBucharest will continue to monitor the legislation and the developments in this area and will report accordingly.

End of report.

